



15.20 Personal Service Contracts — Competitive Procurement Requirements

15.20.10

July 1, 2004

Competitive procurement requirements

RCW 39.29 requires that personal service contracts be competitively procured, with few exceptions. This statute reinforces the state of Washington's strong public policy favoring competition in the purchase of its goods and services. Competition provides protection to the state in ensuring fair market pricing, higher quality services, and provides equal opportunity for qualified firms to participate in state contracting.

Subsection 15.10.20 identifies the categories of contracts that are exempt from the competitive procurement requirements. Subsection 15.20.50 lists exceptions to competitive procurement.

A documented, informal process called "evidence of competition" is required for contracts of \$5,000 to \$19,999, and a documented, formal, competitive process called "competitive solicitation" is required for contracts of \$20,000 or greater. Both are discussed in more detail in the following sections.

15.20.20

July 1, 2004

Evidence of Competition – Informal Competition

For contracts of \$5,000 to \$19,999, the agency is to issue an informal, written solicitation document. At a minimum, the document should include a description of the type of services required, the proposed project schedule, a request for the consultant's qualifications/experience, request for the costs or fees to be charged to perform the service, and the due date and location for written responses to be submitted. The document may be issued as a letter, an electronic memorandum or other format that clearly sets forth the required information, but it must be in written format.

15.20.20.a

The agency is to solicit responses from "multiple firms" in selecting a contractor. "Multiple firms" mean a reasonable number of firms or individuals considering such factors as type of services needed, cost, schedule, and availability. In most instances, for informal competition, multiple means at least three firms. If fewer than three firms are contacted, an explanation is to be included in the contract file as to why more firms were not considered.

- 15.20.20.a.(1) The agency must thoroughly document the process used in selection of the contractor and retain the appropriate documents, including the following:
- Names of the firms contacted and/or solicited.
 - Copy of the solicitation document issued.
 - Copies of the responses.
 - Description of the evaluation and selection process. Indicate the reason(s) for selection of the successful contractor.
 - Copy of the executed contract.
- 15.20.20.a.(2) The agency must maintain auditable documentation of the competitive process in the contract file.

15.20.30
November 1, 2005

Formal competitive solicitation

15.20.30.a

Formal Competitive Solicitation

Competitive solicitation for contracts of \$20,000 or greater requires a documented, formal solicitation process as described in the following subsections.

15.20.30.b

Advertising/Notification

In order to provide an equal and open opportunity for qualified consultants to be made aware of agency solicitations, agencies must take reasonable steps to notify them. One of the two methods listed below is required to be used, unless the exceptions at the end of this subsection apply.

1. **Advertise the Solicitation.** The requirement for advertising is satisfied when a legal notice is published for a minimum of one day in at least one major daily newspaper in Washington State. The advertisement is to clearly describe the scope of work to enable potential bidders to make an informed decision about whether to request the solicitation document.
2. **Use the GA WEBS System.** The Department of General Administration (GA) operates an on-line registration and bid notification system called Washington's Electronic Business Solutions

Personal Service Contracts

(WEBS) Bid Posting and Vendor Notification System. This system was developed to centralize the location of bid notification information for the convenience and benefit of both state agencies and contractors (vendors). WEBS is a cost-effective alternative to publishing legal notices, and agencies are strongly encouraged to use this system. The system is available at: <http://www.ga.wa.gov/webs/>.

Note: If WEBS does not have the commodity category of personal service needed by an agency, you may contact WEBS Customer Service regarding adding the category.

When not using WEBS, agencies that publish a legal notice of the solicitation in a major daily newspaper may **also** publish notices in other types of publications, on Internet sites, on DIS listserve, etc. or they may use an internal agency bidders list. However, these types of notifications are not a substitute for advertising in a major, daily newspaper, per this Subsection.

Exceptions: Exceptions to advertising in a major daily Washington state newspaper are allowed when:

- Contract services will be provided entirely outside of Washington, Oregon and Idaho, but in the United States, or;
- Contract services will be provided entirely outside of the United States.

Some form of advertising is still required for the above two exceptions. However, the agency may select the method and publication(s) in which to advertise based on their determination of what is most appropriate for the services being procured. Agencies may also use the WEBS system for the out-of-state and out-of country solicitations if desired.

15.20.30.c

Direct Contact with Multiple Firms

In order to provide further assurance that contractors are aware of the State's competitive solicitations, agencies must also directly notify/contact firms, businesses and/or individuals about the bidding opportunities. Therefore, either the competitive solicitation document or notification regarding the document must be issued or sent directly to multiple firms or businesses. "Multiple" firms mean a reasonable number of firms depending on the type of services being solicited, but six is a minimum to satisfy this requirement. Therefore, six or more firms, businesses, and/or individuals must be contacted to satisfy this requirement for formal competition. If fewer than six, are known or available, even after

Personal Service Contracts

advertising and/or using other methods to locate more, documentation must be placed in the file to support the agency's conclusion. If WEBS has fewer than six firms in the category needed, the agency should notify other firms to register with WEBS, if the agency is aware of other firms that provide the service.

Simply publishing an advertisement or placing the solicitation document or notification about the solicitation on an Internet site does not satisfy the requirement to directly contact businesses. The agency must notify multiple firms directly in written format, either through electronic methods, regular mail or other available means, to be considered direct notification. WEBS satisfies this requirement if six or more businesses are selected in the system to receive the solicitation document.

15.20.30.d

Competitive Solicitation Document

A formal solicitation document must be developed to describe the agency's need for services or the problem to be addressed. The two most commonly used documents for personal services are the Request for Proposals (RFP) and the Request for Qualifications and Quotations (RFQQ).

The RFP is used when the agency has an identified need or problem and is seeking multiple options from consultants describing their solutions to address the need, their qualifications and their costs or fees. An RFQQ is used when the agency has identified the need, and the services to resolve it, and is looking only for a consultant's qualifications and costs or fees to provide the identified services.

The competitive solicitation document will vary based on the types of requirements related to the project, the complexity of the services, and the project budget. For example, a competitive solicitation document for a \$300,000 project generally includes more requirements than for a \$30,000 project. However, the document must include enough specific information related to the project or scope of work for potential bidders to understand what the agency needs in order to submit viable proposals.

A sample RFP document is included in the "[Guide to Personal Service Contracting](#)" as Appendix C.

15.20.30.e

Receipt of Proposals

Proposals submitted by bidders must have the date and time of receipt noted on each when received at the location specified in the solicitation document. For electronic proposals, the e-mail date and time received are utilized.

Personal Service Contracts

Late proposals should not generally be accepted; however, limited exceptions do exist. Examples include: 1) The late proposal is the only proposal received; 2) Late receipt was due solely to faulty handling of the proposal after receipt by the agency.

Agencies are not responsible for delays experienced by any delivery service and, if proposals are submitted electronically, for problems with e-mail when the agency's systems are operational.

15.20.30.f

Evaluation Criteria

Competitive selection of a contractor is to be based on pre-established evaluation criteria identified in the solicitation document. These criteria may include, but are not limited to, such factors as:

- Experience, ability and capacity.
- Fees or costs.
- Quality of proposed work plan.
- Responsiveness to time limitations.
- Responsiveness to solicitation requirements.
- Quality of previous performance and reputation.
- Compliance with statutes and rules relating to contracts or services.
- Other factors not unnecessarily restrictive to otherwise qualified competitors.

Avoid vague or subjective evaluation criteria.

15.20.30.g

Written Evaluation

Proposals are to be evaluated after the due date for receipt. They are to be evaluated strictly against the evaluation criteria set forth in the solicitation document. Weighting of the evaluation criteria should also be included in the solicitation document.

A minimum of three evaluators should be used to score proposals to ensure a variety of disciplinary skills and abilities are represented. If fewer than three are used, the agency must document why.

Score sheets must be used for evaluation to ensure evaluators are

consistent in the scoring approach and methodology among the proposals. The individual evaluators' scores can be totaled to determine the apparent successful contractor, or the evaluation team can develop a team score, or other similar approaches. It is mandatory, however, that the process used is that which was set forth in the solicitation document and that it is fair and unbiased.

15.20.30.h

Oral Interviews

If oral interviews are conducted among the top finalists from the evaluation of the written proposals, each interview should be conducted in the same format. The oral interview may determine the apparent successful contractor or the scores from the oral presentation and the written proposal may be combined to determine the apparent successful contractor. Evaluators must adhere to the scoring process identified in the solicitation document.

15.20.30.i

Documentation

The evaluation and selection process is to be thoroughly documented in order to substantiate that all bidders were treated equally and fairly and that an equitable and impartial competitive process was conducted. Documentation, at a minimum, should include:

- Copy of the advertisement showing where the ad was placed or the WEBS System Identifier Number through which the bid detail can be displayed in WEBS.
- Copy of the solicitation document.
- Names of firms that were directly sent the solicitation or notification regarding the solicitation.
- Copies of all proposals submitted. If submitted electronically, a disk with the proposals can be retained in the file.
- Summary sheet of scoring for all proposals scored.
- Individual evaluator's score sheets for both the written proposals and oral interviews, if used. If a team score is given for each proposal, just the team score sheet is retained.
- Copy of written notification to successful and unsuccessful bidders.

Personal Service Contracts

Other documentation may include:

- Conflict of Interest and Nondisclosure Form signed by each evaluator.
- Pre-award Risk Assessment form.

This documentation must be retained in accordance with records retention schedules.

15.20.30.j

Debriefing Conferences

Bidders, who participated in the competitive solicitation process and who were not selected for contract award, must be provided the opportunity to participate in a debriefing conference within the time limits included in the solicitation document. The solicitation document should clearly specify the terms and schedule for the debriefings. The debriefing conference is generally required before a bid protest may be submitted.

15.20.40

November 1, 2005

**Master Personal Service Contracts and Convenience
Personal Service Contracts**

Master Contracts. The term “master” personal service contracts, as used in this policy, refers to competitively solicited personal service contracts awarded by the Department of General Administration and the Department of Personnel for use by other state agencies. The Department of General Administration (GA), Office of State Procurement (OSP), Professional Service Solutions (PS2) unit, uses two separate processes—one for personal service contracts that are not for information technology (IT) services and one for information technology personal service contracts.

For non-IT personal service contracts, GA conducts the competition, awards the master contracts, and files them with OFM. To procure personal services under the non-IT master contracts, a second-tier competition is conducted. GA (or the agency) sends a Work Request to consultants/vendors that have contracts for the applicable category. The agency evaluates the responses, awards a Work Order between the agency and contractor, and then provides a fully executed copy of the Work Order to GA.

For IT personal service contracts, GA conducts the initial competition and awards the master contracts (also referred to as primary agreements), but does NOT file them with OFM. To procure personal services under the IT master contracts, a second-tier competition is conducted. GA (or the

Personal Service Contracts

agency) sends a Work Request to consultants/vendors for the applicable category. The agency evaluates responses, awards a Work Contract between the agency and the contractor, files the Work Contract with OFM, and provides a fully executed copy of the Work Contract to GA. GA's competitive processes for non-IT and IT personal services meet OFM's requirements for formal solicitation.

Agencies are responsible to maintain adequate documentation of the second-tier competitive process when using GA's master personal service contracts to substantiate that all bidders were treated equally and fairly and that an equitable and impartial competition was conducted.

Simply accessing names of firms from GA's list of master contractors in a particular category does not satisfy the requirement for second-tier competition. Also, just awarding a contract to a firm from GA's list does not satisfy the requirement for second-tier competition.

More information on these contracts is available on the GA web site at:
<http://www.ga.wa.gov/PCA/Ps2/>.

Agencies may also acquire personal services from the Department of Personnel's (DOP) master personal service contracts for employee-related services such as employee training and organizational development. DOP conducts the competitive process, awards master contracts and files them with OFM. Agencies follow DOP's second-tier competitive process to acquire the services. For more information, visit DOP's web site:
<http://hr.dop.wa.gov/>.

Convenience Contracts. Convenience personal service contracts, for the purposes of this policy, are those that agencies competitively award for their own agency use. Typically, convenience contracts are awarded to provide the agency quick access to personal services on an as-needed or on-call basis. Agencies should identify in the solicitation document the method by which services will be awarded under the convenience contracts so that work is distributed fairly and equitably, especially when multiple contracts are awarded for a type of service. Agencies will often issue task orders or similar documents under the convenience contracts to authorize specific services for a fixed dollar amount and period of performance. Agencies file the convenience contracts with OFM, but not the task orders issued under the convenience contracts.

15.20.50

July 1, 2005

Exceptions to the competitive procurement requirements

The following types of personal service contracts are exceptions to the competitive procurement requirements in Subsection 15.20.10, 15.20.20, and 15.20.30:

- Sole source contracts.
- Emergency contracts.
- Contract amendments.
- Contracts exempt under RCW 39.29.040. See Subsection 15.10.20.
- Contracts exempted from the competitive procurement process by the Director of OFM, when it has been determined that a competitive procurement process is either not appropriate or not cost-effective.

15.20.60

November 1, 2005

Advertising sole source contracts

Personal service contracts in the amount of \$20,000 or more, which the agency has determined are not appropriate for competitive solicitation, (i.e., sole source) shall be advertised for a minimum of one day in either a statewide or regional newspaper. Additional advertisement in other media may also be conducted.

The advertising requirement is based on the individual contract amount, and is not a cumulative total of sole source contracts with a contractor in a fiscal year. Advertising is required regardless of the source of funds of the contract.

15.20.60.a

The advertisement shall include at a minimum:

- The name of the agency.
- A description of the services contemplated for sole source award.
- The proposed period of performance for the services.
- Information as to how an interested party may contact the agency.
- The deadline for an interested party to make such contact.

The name of the proposed contractor may also be included.

- 15.20.60.b If a formal response to the advertisement is received from other than the proposed contractor and the response indicates the firm is qualified to provide the service, competitive solicitation, as set forth in Subsection 15.20.30.a, shall be conducted. If an agency can demonstrate the proposed contractor is the only qualified and available entity to provide the service, although another firm or individual responded, the contract can be filed with OFM as a sole source with a complete explanation as to how this conclusion was reached.
- 15.20.60.c Exemptions from the requirement for advertising sole source procurements include:
- Contracts for services where selection of the contractor is based on an exceptional personal accomplishment or characteristic, such as national experts on a topic or issue, authors of acclaimed books or articles, guest speakers, performers, and artists. This does not apply, however, to contracts for services such as training, facilitation, etc.
 - Contracts for services where the funding source mandates with whom the agency shall contract and, therefore, the agency does not have discretion in making the award decision. Examples include requirements set forth in statute (RCWs), budget provisos, federal awards, etc.
 - Contracts for services that will be provided entirely outside of Washington, Oregon and/or Idaho and/or services provided outside of the United States.
 - Contracts that OFM determines are inappropriate for advertising based upon written request from the agency, which request can be submitted as part of filing the contract.
 - A sole source contract under \$20,000.

15.20.70
July 1, 2005

Managing and monitoring contracts

State agency staff are responsible to proactively manage and monitor their contracts. Effective management and monitoring of personal service contracts is key to successful contracting results. Contract management includes any activity related to contracting for personal services, including the decision to contract, contractor screening, contractor selection, contract preparation, contract monitoring, auditing, and post-contract follow up.

Personal Service Contracts

Contract monitoring includes the planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of the contract.

While the contractor has responsibility to perform under the terms of the contract, the state agency has responsibility for reasonable and necessary monitoring of the contractor's performance. The level of contract monitoring should be based on a risk assessment by the contract manager considering such factors as: amount of funding (large or small), complexity or sensitivity of contract services, contractor experience and capability, contractor financial health, length of time in business, contractor's management structure, etc.

15.20.80

July 1, 2005

How to obtain an exemption from the competitive procurement requirements

RCW 39.29.011(5) authorizes the Director of OFM to exempt specific contracts or classes or groups of contracts from the competitive procurement process, when it has been determined that such a process is not appropriate or not cost-effective. This exemption is not meant to be used in-lieu-of filing sole source contracts. It is intended for exceptional or unusual circumstances that may preclude the use of the standard competitive and filing processes.

15.20.80.a

If an agency concludes that competitive procurement is not appropriate or not cost-effective for a particular category of service or type of contract, the agency may request OFM to exempt that category of contracts from the competitive procurement and filing requirements.

15.20.80.b

The agency should forward a written request for exemption to the Director of OFM well in advance of the proposed contract start date. At a minimum, the request must include:

- A description of the type of service for which an exemption is requested.
- An explanation as to why an exemption is considered appropriate.
- The reason(s) why competitive procurement is not appropriate or cost-effective.
- An explanation of the effect or impact of not having an exemption.

- 15.20.80.c OFM will provide the agency with a timely written response.
- 15.20.80.d In the event that OFM does exempt a specific service or class or group of contracts from competitive procurement, other agencies that may be impacted by the exemption will be notified.

15.20.90
July 1, 2005

Guidelines for executing an amendment to an existing contract

The intent of RCW 39.29 is to establish a policy of open competition for all personal services procured by state agencies. Agencies should ensure that contract amendments are executed to support this policy intent. An agency is to balance its responsibility for securing outside contractual help in the most effective and economical manner possible, with its responsibility to ensure that services are competitively procured whenever appropriate.

15.20.90.a

Within the Scope of Work

Changes to contracts may be awarded as amendments, rather than as new contracts, only if the changes are **within** the general scope of work of the original contract. (Work that is within the general scope of the original contract is that which would be fairly and reasonably within the contemplation and intent of the parties when the contract was awarded.) If the amendment provides for services that are essentially the same as those in the original contract, the amendment would likely be within the general scope of the contract.

Changes that are within the scope of work but which represent **substantial** changes in the quantity, duration, cost, or nature of the work may not be appropriate for contract amendments and may need to be addressed in a new procurement. When the agency includes in their solicitation document the option to extend the contract for additional periods or to add subsequent phases, such amendments, though they may represent substantial changes, are appropriate. They were specified in advance of contract award and all firms who competed were made aware of these potential additions to the contract.

Changes that are outside the general scope of the contract are **not** appropriate to award through contract amendment. Such changes would have the effect of making the work performed substantially different from the work the parties bargained for at the time the original contract was awarded.

Personal Service Contracts

If a contract has expired, it is generally not appropriate to amend it; rather it is more appropriate to award a new contract.

15.20.90.b

Amendment is in the Best Interest of the State

The agency must determine that a proposed amendment is in the best interest of the state of Washington, considering such factors as: project continuity, time savings, cost effectiveness, and the learning curve for a new contractor.

By their nature, contract amendments allow contractors to obtain additional work without having to compete. In view of the state's policy of open competition in the award of personal service contracts, agency staff should carefully and cautiously examine the nature, extent and cost of the additional services and thoroughly justify the decision to award an amendment, rather than to conduct open competition for the services.

When adding funding to a contract, agencies should include in the amendment both the dollar amount of the additional funding and the revised contract maximum (the amendment amount added to the current contract maximum). In addition, agencies should specify what additional services are being provided under the amendment and include any new deliverable dates resulting from the additional dollars being authorized.

15.20.90.c

New Contract Option

If an amendment is not **clearly** determined to be the best choice, the agency must execute a new contract. A new contract is generally appropriate where there is a substantial change in the scope of work, duration, nature of work, or cost, or where there is a logical break in service. When awarding a new contract, competitive requirements must be followed, unless an exception or exemption applies.

15.20.90.d

Amendments to Sole Source and Emergency Contracts

Amendments to sole source and emergency contracts are to be awarded only when the circumstances surrounding the original procurement still exist and, therefore, warrant continued use of sole source or emergency services.